

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5835 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

NAVINBHAI MOHANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

Shri M.C.Shah, Advocate, for the Petitioners.

Shri A.G.Uraizee, Assistant Government Pleader, for Respondents Nos.1 and 2.

Respondent No. 3 served.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 02/09/96

ORAL JUDGEMENT

The order passed by the Secretary (Appeals),

Revenue Department at Ahmedabad (respondent No.2 herein) on behalf of the State Government (respondent No.1 herein) on 1st March 1985 under Section 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.2 set aside the order passed by the Taluka Development Officer at Vagra (respondent No.3 herein) on 10th January 1983 granting N.A.Permission with respect to two parcels of land bearing survey Nos.701/1 and 702 in all admeasuring 18716 square metres situated at taluka Vagra district Bharuch (the disputed lands for convenience).

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that, by his order passed on 10th January 1983, respondent No.3 granted what is popularly known as the N.A.Permission qua the disputed lands on certain terms and conditions. Its copy is at Annexure-B to this petition. It appears to have come to the notice of the concerned officer of respondent No.1. He appears to have found it not according to law. Its suo motu revision under Section 211 of the Code was therefore contemplated. A show cause notice thereupon came to be issued on 22nd October 1984 calling upon the petitioners to show cause why the order at Annexure-B to this petition should not be revised. Its copy is at Annexure-C to this petition. The petitioners filed their reply thereto on 19th November 1984., Its copy is at Annexure-D to this petition. After hearing the parties, by his order passed on 1st March 1985 on behalf of respondent No.1, respondent No.2 set aside the order at Annexure-B to this petition. Its copy is at Annexure-E to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under Article 227 of the Constitution of India for questioning its correctness.

3. Learned Assistant Government Pleader Shri Uraizee for respondents Nos.1 and 2 has raised a preliminary objection as to maintainability of this petition under Article 227 of the Constitution of India. At this stage, learned Advocate Shri M.C.Shah for the petitioners orally prays for treating this petition as also under Article 226 of the Constitution of India. Such oral prayer is accepted and this petition is ordered to be treated as also under Article 226 of the Constitution of India on condition of payment of the deficit court-fees, if any, within 15 days from today.

4. As rightly submitted by learned Advocate Shri Shah for the petitioners, the impugned order at

Annexure-E to this petition cannot be sustained in law in view of the binding ruling of the Supreme Court in the case of STATE OF GUJARAT v. PATEL RAGHAV NATHA reported in (1969) 10 Gujarat Law Reporter at page 992 and the binding Division Bench ruling of this court in the case of BHAGWANJI BAWANJI PATEL v. STATE OF GUJARAT reported in (1971) 12 Gujarat Laws Reporter at page 156. It has been held in the aforesaid binding ruling of the Supreme Court in the case of PATEL RAGHAV NATHA (supra) that the revisional powers under Section 211 of the Code qua the N.A.Permission have to be exercised within the reasonable period of three months. The Division Bench of this court in its aforesaid ruling in the case of BHAGWANJI BAWANJI PATEL (supra) has held that revisional powers under Section 211 of the Code have to be exercised within the reasonable period of one year. Both the aforesaid rulings of the Supreme Court and the Division Bench of this court are on all fours applicable in the present case.

5. It is an admitted position on record that the N.A.Permission was granted on 10th January 1983. The show cause notice for its revision was issued about one year and nine months thereafter on 22nd October 1984. It was thus issued beyond the reasonable period of three months as held by the Supreme Court in its aforesaid binding ruling in the case of PATEL RAGHAV NATHA (supra). It cannot therefore be upheld in law on that ground alone. Even otherwise, in any case, it has been issued more than the reasonable period of one year and it could not be upheld in view of the aforesaid binding Division Bench ruling of this court in the case of BHAGWANJI BAWANJI PATEL (supra). In either view of the matter, the impugned order at Annexure-E to this petition cannot be sustained in law. It has to be quashed and set aside.

6. In the result, this petition is accepted. The order passed by the Secretary (Appeals), Revenue Department at Ahmedabad on 1st March 1985 on behalf of the State Government at Annexure-E to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.

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